

ORIGINAL

Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C.

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In the Matter of:) CRT Docket No. 89-2-87CD
1987 CABLE ROYALTY) Phase II
DISTRIBUTION PROCEEDING)
-----)

ASCAP'S COMMENTS REGARDING CONFIDENTIAL
INFORMATION CONTAINED IN BMI EXHIBIT X-1

Pursuant to the Copyright Royalty Tribunal's order, the American Society of Composers, Authors and Publishers ("ASCAP") hereby submits its comments regarding the confidential information contained in Broadcast Music, Inc.'s ("BMI") Exhibit X-1. ASCAP had asserted that the material in the exhibit was confidential, and requested that the record concerning the exhibit be sealed pursuant to the Tribunal's rules, 37 C.F.R. §301.13(d). Tr. 513-516. The Tribunal requested that ASCAP submit comments as to why the matter is confidential, and why the portion of the record which relates to the exhibit should be sealed. Tr. 535.

In document production, BMI requested "underlying documentation relating to the derivation and calculation of the factors listed in footnote 6 of Dr. Boyle's testimony"

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DATE: DEC 29 1989

(BMI Request No. 7(c)).^{1/} The documentation responsive to BMI's request was contained in excerpts from a report for ASCAP's General Counsel, prepared by Robert R. Nathan Associates, Inc., the independent consultants for the ASCAP survey (the "Nathan Report"), which contained confidential information. Accordingly, in response to BMI's Request No. 7(c) and pursuant to an agreement between counsel, ASCAP produced relevant portions of the Nathan Report with the understanding that the material be kept confidential. BMI introduced this documentation as its Exhibit X-1.

The Nathan Report does not merely describe the methodology underlying the sampling procedures utilized by the ASCAP survey, but also discloses the particular financial information relating to station license fees, by which stations are categorized and selected for sampling in the ASCAP distribution survey. This information is confidential in that it might be used to determine a station's ASCAP license fees, and therefore its revenues -- information which ASCAP is bound to keep confidential pursuant to each station's ASCAP license agreement. In addition, the Nathan Report discloses certain internal ASCAP codes which are confidential and proprietary.

^{1/} In footnote 6 of his written direct testimony, Dr. Boyle stated that the "[f]actors determining which stations are included in the survey are the geographic (U.S. Census) region and type of community in which the stations are located, and the ASCAP license fees they pay (which is a measure of each station's revenues, audience size and economic significance)."

The Nathan Report is not a public document, nor has ASCAP distributed the Nathan Report to its members. Although some of the information and data contained in the Nathan Report may be gleaned from publicly available sources, other aspects of it have not been disseminated in any form or manner. And, the particular compilation of information and data contained in the Nathan Report is unique and non-public and therefore ASCAP treats it as confidential and proprietary.

CONCLUSION

Accordingly, the information contained in BMI Exhibit X-1 is confidential and proprietary, and, pursuant to the Tribunal's rules, 37 C.F.R. §301.13(d), the record relating to this exhibit should remain sealed.

Respectfully submitted

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS & PUBLISHERS



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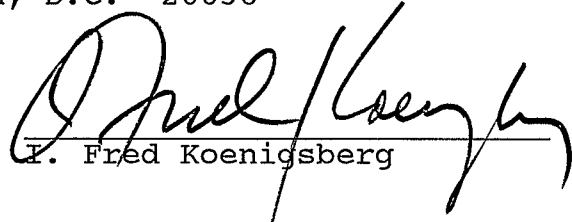
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Dated: December 29, 1989

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Comments of the American Society of Composers, Authors and
Publishers was forwarded on December 28, 1989 for receipt on
December 29, 1989, by overnight delivery to the following:

Charles T. Duncan, Esq.
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